

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

US BANK, N.A.,
Plaintiff,

Pl

VS.

SFR INVESTMENTS POOL 1, LLC et al.,

Defendants.

3:15-cv-00241-RCJ-WGC

ORDER

This case arises out of a homeowners' association ("HOA") foreclosure sale. Pending before the Court is a motion to certify a question of law to the Nevada Supreme Court.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff US Bank, N.A. became the successor beneficiary of a \$236,000 promissory note (the “Note”) and first deed of trust (the “DOT”) encumbering real property at 2546 Napoli Dr., Sparks, NV 89434 (the “Property”) on October 7, 2013. (Compl. ¶¶ 2, 6–19, ECF No. 1). Four months earlier, on June 6, 2013, Defendant D’Andrea HOA (“D’Andrea”) had sold the Property to Defendant SFR Investments Pool 1, LLC (“SFR”) for \$9,000 at a non-judicial HOA foreclosure sale. (*Id.* ¶¶ 31–32). Prior to the sale, counsel for US Bank’s predecessor-in-interest had tendered the \$288 superpriority piece of D’Andrea’s lien to D’Andrea’s counsel, Defendant Alessi & Koenig, LLC (“Alessi”), but Alessi had rejected the tender. (*Id.* ¶¶ 24–30). Defendant Siena HOA (“Siena”) (a sub-HOA of D’Andrea) and its agent, Defendant The Clarkson Law

1 Group, P.C. (“Clarkson”), later initiated a subsequent non-judicial HOA foreclosure based on
2 SFR’s own delinquency in paying HOA assessments to Siena.

3 US Bank sued SFR, D’Andrea, Alessi, Siena, and Clarkson in this Court for: (1) quiet
4 title; (2) a preliminary injunction; (3) wrongful foreclosure; (4) negligence; (5) negligence per se;
5 (6) breach of contract; (7) misrepresentation; (8) unjust enrichment; and (9) breach of the
6 covenant of good faith and fair dealing. SFR answered and counterclaimed for declaratory relief
7 that D’Andrea’s June 6, 2013 foreclosure sale extinguished the DOT under Nevada Revised
8 Statutes section (“NRS”) 116.3116.

9 Clarkson moved to dismiss the single claim against it for a preliminary injunction, and
10 Siena separately moved to dismiss the quiet title and preliminary injunction claims for failure to
11 state a claim. US Bank moved to dismiss SFR’s Counterclaim and for a preliminary injunction
12 preventing Siena and its agents (including Clarkson) from selling the Property. The Court
13 denied Clarkson’s and Siena’s motions to dismiss but granted US Bank’s motion to dismiss the
14 Counterclaim, with leave to amend. The Court consolidated US Bank’s preliminary injunction
15 motion with a trial on the merits as to the single question of the superpriority amount of Siena’s
16 lien against the Property. US Bank stipulated to dismiss as against Clarkson and Siena when
17 they released the lien and rescinded the notice thereof. SFR filed the Amended Counterclaim
18 (“ACC”). US Bank moved to dismiss the ACC for failure to state a claim or, in the alternative,
19 for summary judgment, and SFR filed a countermotion for summary judgment. US Bank and
20 SFR filed additional cross motions for summary judgment as to US Bank’s claims. The Court
21 granted the motion to dismiss the ACC and denied SFR’s countermotion for summary judgment.
22 The Court denied US Bank summary judgment under the opt-in notice statutes but granted it
23 summary judgment on the quiet title claim under the *Bourne Valley Court Tr. v. Wells Fargo*
24 *Bank, NA*, 832 F.3d 1154, 1159 (9th Cir. 2016) and the issue of pre-sale tender of the

1 superpriority amount. The Court reserved judgment on commercial unreasonableness issues.

2 The Court granted summary judgment to SFR against the unjust enrichment claim.

3 **II. DISCUSSION**

4 SFR asks the Court to certify the following question to the Nevada Supreme Court:

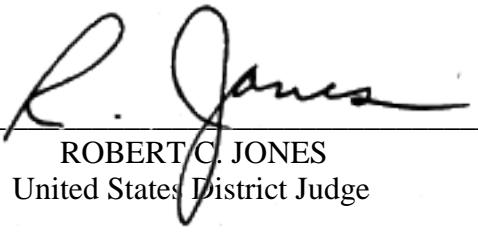
5 “Does NRS 116.31168(1)’s incorporation of NRS 107.090 require homeowners’ associations to
6 provide notices of sale to banks even when a bank does not request notice?” The Court will not
7 certify the question. As the Court has ruled after careful analysis of the language of the statute,
8 the statute’s legislative history, and the Nevada Supreme Court’s own language interpreting the
9 statute’s operation, the answer is “no.” *See U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, 124 F.
10 Supp. 3d 1063, 1079–80 (D. Nev. 2015) (citing *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334
11 P.3d 408, 411 (Nev. 2014)). The Court of Appeals has since ruled in accord. *See Bourne Valley
12 Court Tr.*, 832 F.3d at 1159 (reasoning that NRS 116.31168’s incorporation of NRS 107.090(3)–
13 (4) would render NRS 116.31163 and 116.311635 superfluous).

14 **CONCLUSION**

15 IT IS HEREBY ORDERED that the Motion to Certify (ECF No. 139) is DENIED.

16 IT IS SO ORDERED.

17 DATED: This 24th day of May, 2017.

18 
19 ROBERT C. JONES
20 United States District Judge